IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CRIMINAL REVISION APPLICATION NO. 11 OF 2002

Shri Reuben Vincent Franco,
major, bachelor, Indian
National, self-employed,
resident of C/o Royal Hotel,
Umtawado, Calangute,
Bardez-Goa. ... Applicant.

versus

S T A T E ... Respondent.

Mr. Arun Bras de Sa, Advocate for the Applicant.

Mrs. Winnie Coutinho, Additional Public Prosecutor
for the State/Respondent.

CORAM: P. V. HARDAS, J.

DATED: 14TH JUNE, 2002.

ORAL ORDER

By consent, this Revision is taken for final disposal.

2. The Applicant/Original Accused, who is facing prosecution for an offence punishable under Sections 354, 504 and 509 of the Indian Penal Code, has filed the present revision application against the Order passed by the Judicial Magistrate, First Class, Mapusa, Goa, in Criminal Case No.221/2001/SR, declining to stop the proceedings under Section 258 of the Code of Criminal Procedure and discharge the Accused.

3. A brief reference to the facts is essential and are set out in the Order of the learned Trial Court.

> "Briefly stated the prosecution case is that on 16-9-2001 at around 9.30 hours at Naika Waddo, Calangute, the accused with intention of outraging the modesty of complainant Mrs. Anna Maria D'Souza caught hold of her from back side and said that he will fuck her. That the accused also abused her husband Mr. Casiano D'Souza. Thus accused has been charged for committing offence punishable under Sections 354, 504 and 509 I.P.C. Copies of case papers were furnished to the accused. Learned Advocate for accused filed written submission on record contending discharge of accused under Section 239 Cr.P.C.. I have also heard learned A.P.P. for State on the point".

4. The learned Judicial Magistrate, First Class, Mapusa, on noticing that the provisions of Section 239 of the Code of Criminal Procedure was not attracted, very rightly considered the application of the Accused for discharge under Section 258 of the Code of Criminal Procedure.

5. The learned Trial Court came to the conclusion that the material in the charge-sheet prima facie disclosed the commission of the offence and, therefore, refused to discharge the Accused.

6. Mr. Arun Bras de Sa, the learned Advocate appearing for the Applicant/Accused has urged before me

that there are discrepancies in the statement of the Complainant Mrs. Anna Maria D'Souza and that of her husband Mr. Casiano D'Souza. According to the learned Advocate appearing for the Applicant/Accused, the statement of the Complainant Mrs. Anna Maria D'Souza discloses that she and her husband requested the Accused not to take photographs of their house and to leave the place and while the Complainant and her husband were requesting the Accused to leave the place, he suddenly pounced on her, caught hold of her from behind and is said to have uttered the words. Whereas, according to the learned Advocate appearing for the Applicant/Accused, the statement of Mr. Casiano D'Souza discloses that his wife had alone gone outside and on hearing the shouts of his wife he hurriedly came out and saw that the said person was holding his wife from behind and had heard him uttering the said words. Relying on this discrepancy and on some minor discrepancies, it is urged before me that the offence is prima facie not disclosed.

7. Mrs. Winnie Coutinho, the learned Additional Public Prosecutor appearing for the State has urged before me that at the time of framing of the charge, undoubtedly, the Court has the power to sift and weigh the evidence but the sifting and weighing of the evidence is limited to finding out whether a prima facie

case exists. A discrepancy of the nature as is urged by the Applicant, would not, according to the learned Additional Public Prosecutor appearing for the State, be sufficient to warrant an order of discharge. Reliance is placed by the learned Additional Public Prosecutor appearing for the State on the decision of the Apex Court in **Supdt. & Remembrancer, Legal Affairs, West Bengal v. Anil Kumar Bhunja and others** reported in AIR 1980 SC 52. The Apex Court in this report at para 18 has observed thus:-

> "At the stage of framing charges, the prosecution evidence does not commence. The Magistrate has therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating Police Officer. The standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S. 227 or 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituing the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence".

8. I have given my anxious consideration to the rival submissions advanced before me. The discrepancy

in the statement of the Complainant and her husband is not sufficient to hold that a prima facie case is not made out. The Complainant in her complaint has disclosed the commission of the offence with which the Applicant/Accused is charged. The complaint prima facie discloses the commission of the aforesaid offence.

9. The learned Trial Court has in its Order at para 5 taken into consideration the statement of the Complainant, her husband and the statements of the labourers. On perusal of the statements, the learned Trial Court has come to a conclusion that prima facie an offence under Sections 354, 504 and 509 of the Indian Penal Code has been made out. The learned Trial Court, according to me, has very rightly considered the aspect whether the statements disclosed prima facie the commission of the offence. The Order of the learned Trial Court, therefore, cannot be faulted on the grounds urged before me.

10. The question whether the discrepancy occurring in the statements of the witnesses taken individually or cumulatively renders the prosecution version as improbable is a question which the Court can answer only after recording of the evidence of the prosecution witnesses. This is a question which can be answered when the Court appreciates the evidence of the

prosecution witnesses. A prosecution case cannot be jettisoned at the threshold because of certain discrepancies in the statements of the witnesses. At the time of framing of the charge or explaining the particulars, the Court is only concerned with examining whether prima facie an offence has been established. According to me, the learned Trial Court has examined the material from that point of view and the Order of the learned Trial Court does not deserve any interference in this revision.

11. In view of the matter, Criminal Revision Application No.11 of 2002 is dismissed with no order as to costs.

(P. V. HARDAS, J.)